

securities and that the methodology was reasonably applied.

24. According to the Applicant, the Sale and Cash Infusion were intended to protect the plans and their participants by increasing the assets available to meet benefit payment obligations and redemption requests and by reducing certain risks inherent in each Account's portfolio resulting from market conditions, thereby eliminating or reducing the Wrap Providers' incentives to exercise their contractual termination or immunization rights. State Street represents that it took all appropriate actions necessary to safeguard the interests of each Account and each employee benefit plan with a direct or indirect interest in an Account.

25. In summary, the Applicant represents that the statutory criteria of section 408(a) of the Act and section 4975 of the Code are satisfied because:

(a) The exemption is administratively feasible, as the transaction is already completed and all relevant details have been fully disclosed;

(b) The transaction, if covered by an exemption, is in the interest of the participating plans and their participants and beneficiaries because the transaction will reduce the likelihood that the Wrap Providers will exercise their immunization and termination rights, which would adversely affect the plans and their participants;

(c) The exemption is protective of the rights of participants and beneficiaries of the plans, because: (i) The assets sold were identified for disposition in arm's length negotiations between State Street and two bidders for the acquisition of State Street's stable value business, (ii) independent pricing services were used to value and price the assets sold to State Street, and (iii) no commissions or transaction costs were charged in connection with the sale of the assets.

#### FOR FURTHER INFORMATION CONTACT:

Karen E. Lloyd of the Department, at (202) 693-8554. This is not a toll-free number.

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things,

require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of September, 2009.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. E9-23168 Filed 9-24-09; 8:45 am]

**BILLING CODE 4510-29-P**

#### DEPARTMENT OF LABOR

##### Employee Benefits Security Administration

##### **Grant of Individual Exemptions and Prohibited Transaction Exemptions Involving: M&T Bank Corporation Pension Plan, PTE 2009-26; Bank of New York Mellon Corporation, PTE 2009-27; and Ford Motor Company and Its Affiliates (Collectively, Ford), PTE 2009-28**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

#### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

M&T Bank Corporation Pension Plan,  
Located in Buffalo, NY.

[Prohibited Transaction Exemption  
2009-26

Exemption Application No. D-11470]

## Exemption

### Section I. Transactions

Effective January 18, 2007, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the in-kind redemptions (the Redemptions) of shares (the Shares) held by the M&T Bank Corporation Pension Plan (the Plan) of the MTB Mid Cap Growth Fund and the MTB Large Cap Stock Fund (the Fund(s)) for which affiliates of Manufacturers and Traders Trust Company (M&T) provide investment advisory services and other services.

### Section II. Conditions

This exemption is subject to the following conditions:

(a) The Plan paid no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than M&T and affiliates of M&T (M&T Affiliates)).

(b) The assets transferable to the Plan consisted of only cash and Transferable Securities, as defined in Section III;

(c) With certain exceptions explained in Representation 6 below, the Plan received a pro rata portion of the Transferable Securities, pursuant to the Redemptions that, when added to the cash received, was equal in value to the number of Shares redeemed for such Transferable Securities, as determined in a single valuation (using sources independent of M&T and M&T affiliates) performed in the same manner and as of the close of business on the same day as the day of the Redemptions, in accordance with Rule 2a-4 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act), and the then-existing procedures established by the Fund that are in compliance with the 1940 Act, and the Plan received the Transferable Securities on the next business day following the date of the Redemptions;

(d) Neither M&T nor any M&T Affiliate received any fees, including any fees payable pursuant to Rule 12b-1 under the 1940 Act, in connection with the Redemptions;

(e) M&T retained an Independent Fiduciary, as such term is defined in Section III. The Independent Fiduciary determined that the terms of the Redemptions were fair to the participants of the Plan and comparable to and no less favorable than terms obtainable at arm's length between

unaffiliated parties, and that the Redemptions were in the best interest of the Plan and its participants and beneficiaries;

(f) M&T or the relevant Fund provided to the Independent Fiduciary a written confirmation regarding such Redemptions containing:

(1) The number of Shares held by the Plan immediately before the Redemptions (and the related per Share net asset value and the total dollar value of the Shares held),

(2) the identity (and related aggregate dollar value) of each Transferable Security provided to the Plan at the time of the Redemptions, including each Transferable Security valued in accordance with Rule 2a-4 under the 1940 Act and the then-existing procedures established by the Fund (using sources independent of M&T and M&T Affiliates) for obtaining prices from independent pricing services or market-makers,

(3) the market price of each Transferable Security received by the Plan at the time of the Redemptions, and

(4) the identity of each pricing service or market-maker consulted in determining the value of each Transferable Security at the time of the Redemptions.

(g) The value of the Transferable Securities and cash received by the Plan for each redeemed Share equaled the net asset value of such Share at the time of the transaction, and such value equaled the value that would have been received by any other investor for shares of the same class of the Fund at the time;

(h) For a period of six months following the Redemptions, MTB Investment Advisors (MTBIA), an M&T Affiliate and the investment advisor to the MTB Group of Funds (MTB Funds) reimbursed the Plan for commissions and fees incurred in connection with Transferable Securities received as a result of the Redemptions and subsequently sold;

(i) Following the Redemptions, M&T, on behalf of the Plan, has paid and will continue to pay investment management fees for the Plan's investment in the separate accounts so long as MTBIA serves as the investment manager for the Plan;

(j) Subsequent to the Redemptions, the Independent Fiduciary performs a post-transaction review that includes, among other things, testing a sampling of material aspects of the Redemptions deemed in its judgment to be representative, including pricing;

(k) M&T maintains, or causes to be maintained, for a period of six years from the date the Redemptions, such

records as are necessary to enable the person described in paragraph (l)(1) below to determine whether the conditions of this exemption have been met, except that

(1) if the records necessary to enable the persons described in Section II(l)(1) to determine whether the conditions of this exemption have been met are lost, or destroyed, due to circumstances beyond the control of M&T, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) no party in interest with respect to the Plan other than M&T shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by Section II(k).

(l)(1) Except as provided in this Section II(l)(2) and notwithstanding any provision of section 504(a)(2) and (b) of the act, the records referred to in Section II(k) are unconditionally available at their customary locations for examination during normal business hours by:

(i) Any duly authorized employee or representative of the United States Department of Labor (the Department), the Internal Revenue Service, or the Securities and Exchange Commission,

(ii) any fiduciary of the Plan or any duly authorized representative of such participant or beneficiary,

(iii) any participant or beneficiary of the Plan or duly authorized representative of such participant or beneficiary,

(iv) any employer whose employees are covered by the Plan, and

(v) any employee organization whose members are covered by such Plan;

(2) None of the persons described in Section II(l)(1)(ii) through (v) shall be authorized to examine trade secrets of M&T, the Funds, or the investment advisor for the Funds, or commercial or financial information which is privileged or confidential; and

(3) Should M&T, the Funds, or the investment advisor for the Funds refuse to disclose information on the basis that such information is exempt from disclosure pursuant to Section II(l)(2) above, M&T, the Funds, or the investment advisor shall, by the close of the 30th day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

### Section III—Definitions

For purposes of this proposed exemption,

(a) The term “M & T” means Manufacturers and Traders Trust Company which is a wholly-owned subsidiary of the M&T Bank Corporation.

(b) The term “affiliate” means:

(1) Any person (including a corporation or partnership) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term “net asset value” means the amount for purposes of pricing all purchases and sales calculated by dividing the value of securities, determined by a method as set forth in the Fund’s prospectus and statement of additional information, and other assets belonging to the Fund, less the liabilities charged to each such Portfolio, by the number of outstanding shares.

(e) The term “Independent Fiduciary” means a fiduciary who is:

(1) Independent of and unrelated to M&T and its affiliates, and

(2) Appointed to act on behalf of the Plan with respect to the Redemptions.

For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to M&T if:

(3) Such fiduciary directly or indirectly controls, is controlled by or is under common control with M&T;

(4) Such fiduciary, directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption (except that an independent fiduciary may receive compensation from M&T in connection with the transactions discussed herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary’s ultimate decision); or

(5) Such fiduciary receives, in its current fiscal year, from M&T or its affiliates, an amount that would have exceeded one percent (1%) of such fiduciary’s gross income in the prior fiscal year.

(f) The term “Transferable Securities” shall mean securities

(1) For which market quotations are readily available from persons independent of M&T as determined pursuant to procedures established by the Funds under Rule 2a–4 of the 1940 Act; and

(2) Which are not:

(i) Securities which, if publicly offered or sold, would require registration under the Securities Act of 1933;

(ii) Securities issued by entities in countries which (A) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds, or (B) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange;

(iii) Certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require trading facilities or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership;

(iv) Cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements);

(v) Other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and

(vi) Securities subject to “stop transfer” instructions or similar contractual restrictions on transfer.

*Effective Date:* This exemption is effective as of the date of this grant.

### Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing.

During the comment period, the Department received no requests for a hearing. The Department did receive a comment from the Applicant dated May 1, 2009. The Applicant cited several issues with regard to the Notice as follows.

1) Section II(c) of the Notice reads as follows:

With certain exceptions explained in Representation 6 below, the Plan received a pro rata portion of the Transferable Securities, pursuant to the Redemptions that, when added to the cash received, was equal in value to the number of Shares redeemed for such Transferable Securities, as determined in a single valuation (using sources independent of M&T and M&T affiliates) performed in the same manner and as of the close of business on the same day

as the day of receipt of the Transferable Securities, in accordance with Rule 2a–4 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act), and the then-existing procedures established by the Fund that are in compliance the 1940 Act;

The Applicant explains that the valuation described in section II(c) of the Notice and the actual receipt of the Transferable Securities by the Plan could have occurred on different days. The Applicant represents that although the valuation occurred on the same day as the date of the Redemptions, the actual receipt of the Transferable Securities by the Plan occurred on the next business day following the date of the Redemptions. Based on the Applicant’s clarification, the Department has determined to amend the language of section II(c) as follows:

With certain exceptions explained in Representation 6 below, the Plan received a pro rata portion of the Transferable Securities, pursuant to the Redemptions that, when added to the cash received, was equal in value to the number of Shares redeemed for such Transferable Securities, as determined in a single valuation (using sources independent of M&T and M&T affiliates) performed in the same manner and as of the close of business on the same day as the day of the Redemptions, in accordance with Rule 2a–4 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act), and the then-existing procedures established by the Fund that are in compliance the 1940 Act, and the Plan received the Transferable Securities on the next business day following the date of the Redemptions;

2) The Applicant requested that section II(i) and subparagraph (e) of Paragraph 15 of the Summary of Facts and Representations of the Notice should be deleted. The condition set forth in Section II(i) of the Notice and subparagraph (e) of Paragraph 15 reads as follows:

Following the Redemptions, M&T, on behalf of the Plan, has paid and will continue to pay total annual expenses, including investment management fees for the Plan’s investment in the separate accounts;

In addition, the subparagraph (d) of Paragraph 14 of the Summary of Facts and Representations of the Notice reads as follows:

The Plan will no longer pay investment management fees with respect to its investment in the separate accounts charged by MTBIA.

The Applicant clarified its application to indicate that it intended to pay only investment management fees on behalf of the Plan’s investment in the M&T separate accounts. In this regard, Evercore Trust Company, N.A.

(Evercore), the independent fiduciary and the successor of U.S. Trust Company, stated in a June 9, 2009 letter to the Department that the Funds' total annual expenses include certain expenses that have no clear counterpart when assets are separately managed (e.g., transfer agency fees, custody fees, shareholder servicing fees). The only fees specifically associated with a separately managed arrangement are the manager's investment management fees. Given that M&T has agreed to pay for the investment management fees associated with the separate accounts, it is therefore consistent to describe the Plan's on-going savings as the Fund's total annual expenses.

The Applicant also clarified its application to indicate that it did not intend to absorb permanently the investment management costs associated with the separate accounts on behalf of the Plan. The Applicant represents that if the Plan should cease using MTBIA and hire an investment manager unaffiliated with the Applicant, the Applicant may at that time cease paying the investment management fees.

The Department has revised section II(i) of the Notice to read as follows:

Following the Redemptions, M&T, on behalf of the Plan, has paid and will continue to pay investment management fees for the Plan's investment in the separate accounts so long as MTBIA serves as the investment manager for the Plan;

In addition, subparagraph (d) of Paragraph 14 and subparagraph (e) of Paragraph 15 of the Summary of Facts and Representations in the Notice should read as follows:

Following the Redemptions, M&T, on behalf of the Plan, has paid and will continue to pay investment management fees for the Plan's investment in the separate accounts so long as MTBIA serves as the investment manager for the Plan;

3) The Applicant requests that the language contained in paragraph 2 of the Summary of Facts and Representations in the Notice be revised, in order to reflect the fact that M&T manages Plan investments and does not manage the Plan itself. Paragraph 2 of the Summary of Facts and Representations in the Notice reads as follows:

"M&T serves as trustee of the Plan and manages the Plan."

The Department concurs with the Applicant's suggested revision. In this regard, the last sentence of paragraph 2 of the Summary of Facts and Representations, as set forth in the Notice, should read as follows:

"M&T serves as trustee of the Plan and manages the Plan's investments."

(4) The Applicant requested that the second sentence of paragraph 5 of the Summary of Facts and Representations in the Notice be clarified. The second sentence of Paragraph 5 of the Summary of Facts and Representations in the Notice reads as follows:

M&T determined that the Plan's investments in the Funds were large enough so that an all-cash redemption would adversely impact the Funds and to proceed with the Redemptions.

The Applicant represents that specifically, it was the board of the MTB Funds that determined that an all-cash redemption would adversely impact the MTB Funds.

The Department concurs with the Applicant's suggested revisions. In this regard, the second sentence of paragraph 5 of the Summary of Facts and Representations, as set forth in the Notice is revised to read as follows:

The board of the MTB Funds determined that the Plan's investments in the Funds were large enough so that an all-cash redemption would adversely impact the Funds and to proceed with the Redemptions.

(5) The Applicant requested a clarification of the word "it" which should have read the "MTB Funds" in the third sentence of footnote 9 of the Summary of Facts and Representations. The third sentence of footnote 9 of the Summary of Facts and Representations in the Notice reads as follows:

M&T represents it has adopted procedures in accordance with the Signature Financial Letter for use in affiliated transactions, and those procedures must be followed for transactions with the Plan, as the Plan is treated as an affiliate under the 1940 Act of the funds whose shares are being redeemed.

The Department concurs with the Applicant's suggested revisions. In this regard, the third sentence of footnote 9 of the Summary of Facts and Representations in the Notice is amended to read as follows:

M&T represents that the MTB Funds have adopted procedures in accordance with the Signature Financial Letter for use in affiliated transactions, and those procedures must be followed for transactions with the Plan, as the Plan is treated as an affiliate under the 1940 Act of the funds whose shares are being redeemed.

After reviewing the entire record, including the comments submitted, the Department has decided to grant this exemption as revised herein. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on February 25, 2009, 74 FR 8576.

#### FOR FURTHER INFORMATION CONTACT:

Anh-Viet Ly of the Department, telephone (202) 693-8648. (This is not a toll-free number).

Bank of New York Mellon Corporation,  
Located in Pittsburgh, PA.

[Prohibited Transaction Exemption  
2009-27

[Application No. D-11553]

#### Exemption

The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,<sup>1</sup> shall not apply, effective November 25, 2008, to the cash sale of certain securities (the Securities) issued by Lehman Brothers Holdings Inc. or its affiliates (Lehman) for an aggregate purchase price of approximately \$5,512,395 by the EB SMAM Securities Lending Temporary Investment Fund (the Cash Collateral Fund) to the Bank of New York Mellon Corporation (BNYMC), a party in interest with respect to the employee benefit plans (the Plan(s)) invested, directly or indirectly, in the Cash Collateral Fund; provided that the following conditions are met:

(a) The sale of the Securities was a one-time transaction for cash;

(b) The Cash Collateral Fund received an amount for the sale of the Securities which was equal to the sum of:

(1) The amortized cost of the Securities, and

(2) The accrued but unpaid interest on each of the Securities, determined as of the *earlier of*: (A) The date of the sale of the Securities, or (B) the maturity date of each of the Securities;

(c) The amount received by the Cash Collateral Fund for the sale of the Securities was greater than the aggregate market value of the Securities at the time of the sale, as determined based on information regarding the then prevailing trading prices for the Securities obtained from two independent broker-dealers;

(d) The Cash Collateral Fund did not bear any commissions, fees, transactions costs, or other expenses in connection with the sale of the Securities;

(e) The Bank of New York Mellon (BNY Mellon), as trustee of the Cash Collateral Fund, determined that the sale of the Securities was appropriate for and in the best interest of the Cash Collateral Fund, and the Plans invested,

<sup>1</sup> For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

directly or indirectly, in the Cash Collateral Fund, at the time of the transaction;

(f) BNY Mellon took all appropriate actions necessary to safeguard the interests of the Cash Collateral Fund, and the Plans invested, directly or indirectly, in the Cash Collateral Fund, in connection with the transaction, given that Lehman had filed for bankruptcy and that the value of the Securities had declined substantially;

(g) If the exercise of any of BNYMC's rights, claims, or causes of action in connection with its ownership of the Securities results in BNYMC recovering from Lehman, the issuer of the Securities, or from any third party, an aggregate amount that is more than the sum of:

(1) The purchase price paid for such Securities by BNYMC; and

(2) The interest due on the Securities from and after the date BNYMC purchased the Securities from the Cash Collateral Fund, determined at the last published interest rate on the Securities preceding Lehman's bankruptcy filing. BNYMC will refund such excess amount promptly to the Cash Collateral Fund (after deducting all reasonable expenses incurred in connection with the recovery);

(h) BNY Mellon and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the transaction such records as are necessary to enable the persons described, below, in paragraph (i)(1), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Plan which engages in the transaction, other than BNY Mellon and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (i)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of BNY Mellon and its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(i)(1) Except as provided, below, in paragraph (i)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (h) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the

Internal Revenue Service, or the Securities and Exchange Commission; or

(B) Any fiduciary of a Plan that engages in the transaction, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the transaction, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan that engages in the transaction, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in paragraph (i)(1)(B)–(D) shall be authorized to examine trade secrets of BNY Mellon and its affiliates, as applicable, or commercial or financial information which is privileged or confidential; and

(3) Should BNY Mellon and its affiliates, as applicable, refuse to disclose information on the basis that such information is exempt from disclosure, BNY Mellon and its affiliates, as applicable, shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

*Effective Date:* This exemption is effective, as of November 25, 2008.

After giving full consideration to the entire record, the Department has decided to grant the exemption, as described above. The complete application file is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N-1513, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on July 23, 2009, at 74 FR 36515.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena C. Le Blanc of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

Ford Motor Company and Its Affiliates, (collectively, Ford) Located in Detroit, MI.

[Prohibited Transaction Exemption 2009-28 Application No. L-11451]

## Exemption

### Section I. Covered Transactions

The restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 406(b)(1), and

406(b)(2) of the Act shall not apply, effective July 13, 2006, to: (1) monthly cash advances to Ford by the Independent Health Care Trust for UAW Retirees of Ford Motor Company (the DC VEBA), as defined in section III(f), below, of this exemption, to reimburse Ford for the estimated mitigation of certain health care expenses (the Mitigation), as defined in section III(h), below, of this exemption, and during the period from July 14, 2006 through February 28, 2007, for the payment of dental expenses incurred by participants in the DC VEBA; and (2) an annual "true-up" of the Mitigation payments and dental expenses against the actual expenses incurred, with the result that: (a) if Ford has been underpaid by the DC VEBA, Ford receives the balance outstanding from the DC VEBA with interest, or (b) if the DC VEBA has overpaid Ford, Ford reimburses the DC VEBA for the amount overpaid, with interest.

### Section II. Conditions

This exemption is conditioned upon adherence to the material facts and representations described in application for exemption, and upon satisfaction of the following conditions:

(a) A committee (the Committee), as defined in section III(d), below, of this exemption, acting as a fiduciary independent of Ford, has represented and will continue to represent the DC VEBA and its participants and beneficiaries for all purposes with respect to the Mitigation process under the settlement agreement (the DC VEBA Settlement Agreement or the Settlement Agreement), as defined in section III(g), below, of this exemption.

(b) The Committee for the DC VEBA has discharged and will continue to discharge its duties consistent with the terms of the DC VEBA and the Settlement Agreement.

(c) The Committee and actuaries retained by the Committee have reviewed and approved and will continue to review and approve the estimation process involved in the Mitigation, which results in the monthly Mitigation amount paid to Ford.

(d) Outside auditors retained by the Committee, along with an administrative company that is partly owned by the DC VEBA, have audited and will audit the calculation of the true-up to determine whether there are any differences between the estimated Mitigation and actual Mitigation amounts and have made and will make such information available to Ford.

(e) Ford has provided various reports and records to the Committee concerning dental care reimbursements

for the period from July 14, 2006, through February 28, 2007, which were subject to review and audit by the Committee, and Ford has provided and will continue to provide various reports and records to the Committee concerning the Mitigation required under the Settlement Agreement which were and will continue to be subject to review and audit by the Committee.

(f) The terms of the covered transactions are no less favorable and will continue to be no less favorable to the DC VEBA than the terms negotiated at arm's length under similar circumstances between unrelated third parties.

(g) The interest rate applied to any true-up payments is a reasonable rate, as set forth in the DC VEBA Settlement Agreement, and will continue to be a reasonable rate that runs from the beginning of the year being trueed up and does not and will not present a windfall or detriment to either party.

(h) The DC VEBA has not incurred and will continue not to incur any fees, costs, or other charges (other than those described in the DC VEBA and the DC VEBA Settlement Agreement) as a result of the covered transactions described herein.

(i) Ford and the Committee have maintained and will continue to maintain for a period of six (6) years from the date of any of the covered transactions, any and all records necessary to enable the persons described in section II(j), below, of this exemption to determine whether conditions of this exemption have been and will continue to be met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Ford or the Committee, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Ford or the Committee shall be subject to the civil penalty that may be assessed under section 502(i) of the Act if the records are not maintained, or are not available for examination as required by section II(j), below, of this exemption.

(j)(1) Except as provided in section II(j)(2), below, of this exemption and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in section II(i), above, of this exemption have been or will be unconditionally available at their customary location during normal business hours to:

(A) Any duly authorized employee or representative of the Department;

(B) The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the

UAW) or any duly authorized representative of the UAW;

(C) Ford or any duly authorized representative of Ford; and

(D) Any participant or beneficiary of the DC VEBA, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in section II(j)(1)(B) or (D), above, in this exemption is authorized to examine the trade secrets of Ford, or commercial or financial information that is privileged or confidential.

### Section III. Definitions

For purposes of this exemption, the term—

(a) “Ford” means Ford Motor Company and its affiliates.

(b) “Affiliate” means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; or

(3) Any corporation, partnership or other entity of which such other person is an officer, director or partner. (For purposes of this definition, the term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(c) “Class” or “Class Members” mean all persons who, as of the ratification date (the Ratification Date), as defined in section I(a) of the Settlement Agreement, (*i.e.*, December 22, 2005) were: (1) Ford/UAW hourly employees who had retired from Ford with eligibility to participate in retirement in the Hospital-Surgical-Medical-Drug-Dental-Vision Program (the Original Plan), as in effect prior to the Ratification Date, or (2) the spouses, surviving spouses, and dependents of Ford/UAW hourly employees, who, as of the Ratification Date, were eligible for post-retirement or surviving spouse health care coverage under the Original Plan as a consequence of a Ford/UAW hourly employee's retirement from Ford or death prior to retirement. Active employees, as defined in section I(A) of the Settlement Agreement, are not members of the Class.

(d) “Committee” means the seven (7) individuals, consisting of two classes: (1) the UAW with three members, and (2) the public class with four members, who act as the named fiduciary and administrator of the DC VEBA.

(e) “Court” or “Michigan District Court” means the United States District

Court for the Eastern District of Michigan.

(f) “DC VEBA” means the defined contribution—Voluntary Employees' Beneficiary Association trust established by Ford pursuant to the Settlement Agreement and the trust agreement (the Trust Agreement).

(g) “DC VEBA Settlement Agreement” or the “Settlement Agreement” means the agreement, dated February 13, 2006, which was entered into between Ford, the UAW, and class representatives, on behalf of a class of plaintiffs in a class action suit cited as *Int'l Union, UAW, et al. v. Ford Motor Company* (Civil Case No. 05-74730 (E.D. Mich. July 13, 2006), *aff'd*, 497 F.3d 615 (6th Cir. 2007) (hereinafter referred to as the Hardwick I Case).

(h) “Mitigation” means the reduction of monthly contributions, deductibles, out-of-pocket maximums, co-insurance payments, or any other payment in accordance with section 14 of the Settlement Agreement to the extent payments from the DC VEBA are made, as directed by the Committee, to Ford and/or to providers, insurance carriers and other agreed-upon entities.

(i) “OPEB” means Other Post-Employment Benefits. The OPEB Valuation is an actuarially developed valuation of a company's post retirement benefit obligations, other than for pension and other retirement income plans. The OPEB Valuation is based on a set of uniform financial reporting standards promulgated by the Financial Accounting Standards Board and embodied in Financial Accounting Standard 106, as revised from time to time. The types of benefits addressed in an OPEB Valuation typically are retiree healthcare (medical, dental, vision, hearing) life insurance, tuition assistance, and legal services.

(j) “Shares” or “Stock” refers to the common stock of Ford for which the par value is \$.01.

(k) “UAW” means the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America or the United Auto Workers, if shortened.

(l) “VEBA” means a voluntary employees' beneficiary association.

(m) “Defined Contribution Plan” or “the Defined Contribution Plan of the Independent Health Care Trust for UAW Retirees of Ford Motor Company” means the defined contribution welfare benefit plan funded by the DC VEBA following the effective date (the Effective Date), as defined in section I(A) of the Settlement Agreement (*i.e.*, July 13, 2006), which will include the requirement to make contributions to

the DC VEBA, as set forth in section 13 of the Settlement Agreement.

**Effective Date:** This exemption is effective, as of July 13, 2006.

#### Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on June 26, 2009.

During the comment period, the Department received no requests for a hearing. However, the Department received a comment from the applicant informing the Department of a correction to certain language contained in the heading of the Notice. In this regard, the references to "Ford Motor Corporation," as set forth in the heading of the Notice on page 30635, should be revised to read "Ford Motor Company."

The Department acknowledges the correction, as requested by the applicant, and in the final exemption has amended the reference to Ford Motor Company.

After giving full consideration to the entire record, the Department has decided to grant the exemption, as amended above. The complete application file is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on June 26, 2009, at 74 FR 30635.

#### FOR FURTHER INFORMATION CONTACT:

Angelena C. Le Blanc of the Department at telephone number 202-693-8540 (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with

section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of September 2009.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. E9-23167 Filed 9-24-09; 8:45 am]

**BILLING CODE 4510-29-P**

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09-082)]

#### NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

**DATE:** Friday, October 16, 2009, 2 p.m. to 5 p.m. Eastern Daylight Time.

**ADDRESSES:** This meeting will take place telephonically. Any interested person may contact Ms. Marian Norris to receive a toll free number and pass code needed to participate in this meeting by telephone.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marian Norris, Science Mission

Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-4452, fax (202) 358-4118, or [mnorris@nasa.gov](mailto:mnorris@nasa.gov).

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting includes the following topics:

—Planetary Science Division Update.  
—Mars Science Laboratory Update.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

**P. Diane Rausch,**

*Advisory Committee Management Officer,  
National Aeronautics and Space  
Administration.*

[FR Doc. E9-23176 Filed 9-24-09; 8:45 am]

**BILLING CODE 7510-13-P**

#### NATIONAL NANOTECHNOLOGY COORDINATION OFFICE

**Nanoscale Science, Engineering and Technology Subcommittee, National Science and Technology Council, Committee on Technology; Nanomaterials and the Environment & Instrumentation, Metrology, and Analytical Methods Workshop: Nanotechnology Primer Public Pre-Meeting**

**ACTION:** Notice of public meeting.

**SUMMARY:** The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC), will hold a Nanotechnology Primer public pre-meeting on October 5, 2009, prior to the public meeting on Nanomaterials and the Environment & Instrumentation, Metrology, and Analytical Methods Workshop. The purpose of this pre-meeting is to provide general background material about nanotechnology and Federal nanotechnology research to participants.

**DATES:** A Nanotechnology Primer public pre-meeting will be held on Monday, October 5, 2009 from 7 p.m.-8:30 p.m.

**ADDRESSES:** The Nanotechnology Primer public pre-meeting will be held at the Holiday Inn Rosslyn-Key Bridge, 1900 N. Fort Myer Drive, Arlington, VA 22209 (Metro stop: Rosslyn on the Orange and Blue lines). For directions, please see <http://www.holidayinn.com>.

**Registration:** Due to space limitations, pre-registration for the workshop is required. People interested in attending the workshop and/or the